

Senate Bill No. 380

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 4, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 7908 of the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, Padilla. Communications: service interruptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings and that is obtained prior to the interruption. The bill would require the order to clearly describe the specific communications service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected and be narrowly tailored to the specific circumstances under which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of communications service only for as long as is reasonably necessary, require that the interruption cease once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communications service provider to cease the interruption.

The bill would authorize a governmental entity to interrupt communications service without first obtaining a court order if it reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court

order, and it complies with other specified requirements including, applying for a court order without delay, but within 6 hours after the commencement of the interruption of communications service. If the application is filed after the 6 hours, as the bill would authorize in an emergency, the application would be required to include a specified statement under penalty of perjury. Since perjury is a crime, this bill would impose a state-mandated local program by creating a new crime. Additionally, the bill would require a governmental entity to provide to the provider of communications service a signed statement of intent to apply for a court order signed by an authorized official. If a governmental entity does not apply for a court order within 6 hours due to the emergency, the bill would require the governmental entity to submit a copy of the signed statement of intent to the court within 6 hours.

The bill would provide that good faith reliance upon an order of a judicial officer or a signed statement of intent to apply for a court order constitutes a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

The bill would also find and declare that ensuring that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in constitutionally protected expression, is a matter of statewide concern, and not a municipal affair, as provided.

The bill would repeal these new provisions on January 1, 2020.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Preserving the availability and openness of communications networks is a bedrock principle of federal and state law and essential to commerce, public safety, and democracy.

(b) With email, data transfers, videoconferencing, e-commerce, and myriad online services now a core element of every type of economic activity, interruption of communications service deprives individuals and enterprises of the ability to participate in the modern economy, with significant financial impact even if an interruption is of short duration.

(c) Interruption of communications service threatens public safety by depriving persons of the ability to call 911 and communicate with family, friends, employers, schools, and others in an emergency; deprives persons of the ability to receive wireless emergency alerts; and impairs the ability of first responders to communicate with each other.

(d) The right of citizens to freedom of speech under the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution extends to speech through any technology, from the pamphlets and newspapers of the Founding Fathers to the emails, blogs, tweets, and texts of modern day citizens using wireless devices.

(e) The power of new wireless devices and technologies for participation in democracy underscores the need to protect First Amendment rights and ensure that California and the United States do not take the path of oppressive governments around the world that routinely shut down the Internet and wireless networks to silence public protest.

(f) Interruption of communications service by a governmental entity that prevents citizens from communicating can be a “prior restraint” on speech, which the United States Supreme Court has held bears a heavy presumption of unconstitutionality and is justified only in exceptional circumstances.

(g) The California Supreme Court, in *Sokol v. Public Utilities Commission* (1966) 65 Cal.2d 247, 265, articulated the standard that any future commission rule for discontinuation of telephone services used for illegal purposes must at a minimum require that police obtain prior authorization to secure the termination of service by satisfying an impartial tribunal that they have probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant.

(h) In August 2011, the Bay Area Rapid Transit District (BART) shut down wireless service for three hours in order to quash a public protest relating to a fatal shooting by BART police on a train platform.

(i) In December 2011, BART adopted a policy authorizing wireless service shutdowns with no court review and no probable cause requirement, which prompted a public inquiry by the Federal Communications Commission.

(j) With more than 85 percent of American adults owning a wireless device, and use of wireless services and platforms expanding every day, protecting these services from interruption is more important than ever in order to protect commerce, public safety, and First Amendment freedoms that are the core of democracy.

SEC. 2. Section 7908 is added to the Public Utilities Code, to read:

7908. (a) For purposes of this section, the following terms have the following meanings:

(1) “Communications service” means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) “Governmental entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(3) (A) “Interrupt communications service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area.

(B) “Interrupt communications service” does not include any interruption of communications service pursuant to a customer service agreement, a contract, a tariff, a provider’s internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, or Section 4575 or subdivision (d) of Section 4576 of the Penal Code.

(C) “Interrupt communications service” does not include any interruption of service pursuant to an order to cut, reroute, or divert service to a telephone line or wireless device used or available for use for communication by a person or persons in a hostage or barricade situation pursuant to Section 7907. However, “interruption of communications service” includes any interruption of service resulting from an order pursuant to Section 7907 that affects service to wireless devices other than any wireless device used by, or available for use by, the person or persons involved in a hostage or barricade situation.

(4) “Judicial officer” means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities of any state or federal court located in this state.

(b) (1) Unless authorized pursuant to subdivision (c), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer obtained prior to the interruption. The order shall include all of the following findings:

(A) That probable cause exists that the service is being or will be used for an unlawful purpose or to assist in a violation of the law.

(B) That absent immediate and summary action to interrupt communications service, serious, direct, and immediate danger to public safety, health, or welfare will result.

(C) That the interruption of communications service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or a violation of any other rights under federal or state law.

(2) The order shall clearly describe the specific communications service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected, shall be narrowly tailored to the specific circumstances under which the order is made, and shall not interfere with more communication than is necessary to achieve the purposes of the order.

(3) The order shall authorize an interruption of communications service only for as long as is reasonably necessary and shall require that the interruption cease once the danger that justified the interruption is abated and shall specify a process to immediately serve notice on the communications service provider to cease the interruption.

(c) (1) Communications service shall not be interrupted without first obtaining a court order except pursuant to this subdivision.

(2) If a governmental entity reasonably determines that an extreme emergency situation exists that involves immediate danger of death or great bodily injury and there is insufficient time, with due diligence, to first obtain a court order, then the governmental entity may interrupt communications service without first obtaining a court order as required by this section, provided that the interruption meets the grounds for issuance of a court order pursuant to subdivision (b) and that the governmental entity does all of the following:

(A) (i) Applies for a court order authorizing the interruption of communications service without delay, but within six hours after commencement of an interruption of communications service except as provided in clause (ii).

(ii) If it is not possible to apply for a court order within six hours due to an emergency, the governmental entity shall apply for a court order at the first reasonably available opportunity, but in no event later than 24 hours after commencement of an interruption of communications service. If an application is filed more than six hours after commencement of an interruption of communications service pursuant to this clause, the application shall include a declaration under penalty of perjury stating the reason or reasons that the application was not submitted within six hours after commencement of the interruption of communications service.

(B) Provides to the provider of communications service involved in the service interruption a statement of intent to apply for a court order signed by an authorized official of the governmental entity. The statement of intent shall clearly describe the extreme emergency circumstances and the specific communications service to be interrupted. If a governmental entity does not apply for a court order within 6 hours due to the emergency, then the governmental entity shall submit a copy of the signed statement of intent to the court within 6 hours.

(C) Provides conspicuous notice of the application for a court order authorizing the communications service interruption on its Internet Web site without delay, unless the circumstances that justify an interruption of communications service without first obtaining a court order justify not providing the notice.

(d) An order to interrupt communications service, or a signed statement of intent provided pursuant to subdivision (c), that falls within the federal Emergency Wireless Protocol shall be served on the California Emergency Management Agency. All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas.

(e) A provider of communications service that intentionally interrupts communications service pursuant to this section shall comply with any rule or notification requirement of the commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

(f) Good faith reliance by a communications service provider upon an order of a judicial officer authorizing the interruption of communications service pursuant to subdivision (b), or upon a signed statement of intent to apply for a court order pursuant to subdivision (c), shall constitute a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

(g) The Legislature finds and declares that ensuring that California users of any communications service not have that service interrupted, and thereby be deprived of 911 access to emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2013

Governor